Willie Stewart Jr.
NAME
P14596
PRISON NUMBER
Pleasant Valley State Prison
P.O. Box 8501
CURRENT ADDRESS OR PLACE OF CONFINEMENT
Coalinga, CA 93210
CITY, STATE, ZIP CODE

FILED
JUL 28 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Willie Stewart Jr.,
(FULL NAME OF PETITIONER)

PETITIONER

v.

James Yates, Warden,
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

Edmund G. Brown Jr.,
The Attorney General of the State of California, Additional Respondent.

Civil No 08cv1177-BTM(NLS)
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

FIRST AMENDED
PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: The Superior Court, P.O. Box 122724, San Diego, CA 92112-2724
2. Date of judgment of conviction: 05-24-00
3. Trial court case number of the judgment of conviction being challenged: SCN079629
4. Length of sentence: 55-yrs to Life

5. Sentence start date and projected release date: 05-24-00 2053

6. Offense(s) for which you were convicted or pleaded guilty (all counts): G.B.I. Resulting in Death

7. What was your plea? (CHECK ONE)
   (a) Not guilty ☑
   (b) Guilty ☐
   (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
   (a) Jury ☑
   (b) Judge only ☐

9. Did you testify at the trial?
   ☐ Yes ☑ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
    ☑ Yes ☐ No

11. If you appealed in the **California Court of Appeal**, answer the following:
    (a) Result: Remanded in Part and Reversed in Part
    (b) Date of result (if known): Jan. 2000, 04
    (c) Case number and citation (if known): D032206
    (d) Names of Judges participating in case (if known) Huffman, J., Work, Acting P.J. and Haller, J.
    (e) Grounds raised on direct appeal: Sufficiency of the Evidence, Evidence of Prior Acts, Lesser Included Offenses, Sentencing Issues

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
    (a) Result: Denied
    (b) Date of result (if known): April 12, 2000
    (c) Case number and citation (if known): ~~S144845~~ S085609
    (d) Grounds raised: Insufficieny of Evidence, Several Jury Instruction

13. If you filed a petition for certiorari in the **United States Supreme Court**, please answer the following with respect to that petition:

(a) Result: N/A

(b) Date of result (if known): ______

(c) Case number and citation (if known): ______

(d) Grounds raised: ______

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Superior Court**?

☑ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

(a) **California Superior Court** Case Number (if known): UNKNOWN

(b) Nature of proceeding: Writ of Habeas

(c) Grounds raised: The Trial Court imposed an illegal Fine/Restitution

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☑ No

(e) Result: ______

(f) Date of result (if known): ______

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Court of Appeal**?

☑ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

(a) **California Court of Appeal** Case Number (if known): D047990

(b) Nature of proceeding: Writ of Habeas Corpus

(c) Names of Judges participating in case (if known) McIntyre, Acting P.J.

(d) Grounds raised: The Trial Court Imposed an illegal Fine/Restitution

(e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☑ No

(f) Result: Denied

(g) Date of result (if known): April 28, 2006

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
☑ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

(a) **California Supreme Court** Case Number (if known): S144845

(b) Nature of proceeding: Writ of Habeas Corpus

(c) Grounds raised: The Trial Court Imposed an illegal Fine/Restitution

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☑ No

(e) Result: Denied

(f) Date of result (if known): Jan. 24, 2007

20. If you did ***not*** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the **California Supreme Court**, containing the grounds raised in this federal Petition, explain briefly why you did not:

____

____

____

____

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?
☑ Yes ☐ No (IF "YES" SKIP TO #22)
   (a) If no, in what federal court was the prior action filed? ______________
   (i) What was the prior case number? ______________
   (ii) Was the prior action (CHECK ONE):
   ☐ Denied on the merits?
   ☐ Dismissed for procedural reasons?
   (iii) Date of decision: ______________
   (b) Were any of the issues in this current petition also raised in the prior federal petition?
   ☐ Yes ☐ No
   (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
   ☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present ***all*** other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE**: The Trial Court Imposed an Illegal Fine/Restitution

Supporting FACTS: The trial Court on 10-22-1998 made an incorrect Application of sentencing guidelines by imposing a fine that Defendant has little chance of Paying. Determination that Defendant has sufficient assets to Pay fine must be based on more than a statement to that effect in the Presentence Report or by word of mouth of victim's family. The Trial Court didn't ask for any Receipt of documents from victim's family, neither did the family present any write facts that would allow the court to legally impose any amount. The court did not establish any factual grounds on date of sentencing me to the cruel and unusal fines and Restitution.

(See Attached memorandum of Points and Authorities)

Did you raise GROUND ONE in the California Supreme Court?

☑ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): Writ of Habeas Corpus

(2) Case number or citation: S144845

(3) Result (attach a copy of the court's opinion or order if available): SEE Attachment

CIV 68 (Rev. Jan. 2006)

cv

(b) GROUND TWO:

Supporting FACTS:

Did you raise GROUND TWO in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

(c) **GROUND THREE:** ______________________________

Supporting FACTS: ______________________________

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): ______________

(2) Case number or citation: ______________

(3) Result (attach a copy of the court's opinion or order if available): ______________

(d) **GROUND FOUR:** ______________________________

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Supporting FACTS: ______________________________

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Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): ______________

(2) Case number or citation: ______________________________

(3) Result (attach a copy of the court's opinion or order if available): ______________

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?
☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: ____________________

(b) Case Number: ____________________

(c) Date action filed: ____________________

(d) Nature of proceeding: ____________________

____

(e) Name(s) of judges (if known): ____________________

(f) Grounds raised: ____________________

____

____

____

____

(g) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: JACK CAMPBELL Public Defender

____

(b) At arraignment and plea: JACK CAMPBELL

____

(c) At trial: JACK CAMPBELL

____

(d) At sentencing: JACK CAMPBELL

____

(e) On appeal: JEFFREY J. STUETZ

(f) In any post-conviction proceeding: ____________________

____

(g) On appeal from any adverse ruling in a post-conviction proceeding: ____________________

____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
☐ Yes ☑ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
☑ Yes ☐ No

(a) If so, give name and location of court that imposed sentence to be served in the future: Superior Court of Florida

(b) Give date and length of the future sentence: unknown

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
☑ Yes ☐ No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

☐ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☑ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court: July 24, 2008

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

____
SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

July 24, 2008 ______________________________
(DATE) SIGNATURE OF PETITIONER

S144845

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re WILLIE STEWART JR., on Habeas Corpus

Petition for writ of habeas corpus is DENIED. (See *In re Dixon* (1953) 41 Cal.2d 756; *In re Robbins* (1998) 18 Cal.4th 770, 780.)

Moreno, J., was absent and did not participate.

SUPREME COURT
FILED
JAN 2 4 2007
Frederick K. Ohlrich Clerk
DEPUTY

GEORGE

Chief Justice

Willie Stewart Jr.
P14596 A2-127
Pleasant Valley State Prison
P.O. Box 8501
Coalinga, Ca 93210

United States District Court
Southern District of California

Willie Stewart Jr.
Petitioner,

v

James Yates, Warden
Respondent.

Civil No. 08cv1177-BTM (NLS)

Memorandum of Points And Authorities

Petitioner in Pro Per hereby submits the Folling Memorandum of Points and Authorities in support of Habeas Corpus Petition under 28 U.S.C. 2254.

Argument

Petitioner, Willie Stewart Jr., Contends that the California State Superior Court imposed a Fine of Restitution without good Faith. The Superior Courts sentence and determination of the amount specifically applied to Restitution totalling $13,000 was excessive and didn't warrant the Trial's Court effort in Fact-ually Finding that (1) Defend had the required Assets in some form, or (2) would at a later date have the ability to pay the restitution imposed. The courts lack of factual determination was an error.

I. In U.S. v Ganados, 962 F.2d 72 (8th Cir. 1992), The court stated, "It is incorrect application of sentencing guidelines to impose a fine that the Defendant has little chance of paying."

That court goes further in also stating, "Determination that Defendant has sufficient assets to pay fine must be based on more than a statement to that effect in the presentence Report."

Therefor the State Superior Courts inability to show cause after the presentence report of why the imposition was appropriate is viable grounds for relief.

II. In U.S. v Voda, 994 F.2d 149 (5th Cir. 1993) The Court Determined that "Courts are constitutionally limited in penalty they can impose for nonpayment of criminal fines because of inability to pay."

Such determination is also supported by Government Code 13967(a) and has been reviewed in the State Supreme Court in such cases as, People v Wilson (Cal. App. - 1. Dist. 1994) 26 Cal. Rptr. 2d 537.

III. In U.S. v Rosa, 11 F.3d 315 (2nd Cir. 1993), The Court stipulated that the, "District Court must afford Defendant at least minimal opportunity to show that he lacks ability to pay fine proposed by the Court."
(See also U.S. v Walker, 39 F.3d 489 4th Cir. 1994)

IV. In U.S. v Francisco, 35 F.3d 116 (4th Cir. 1994) The Court stated, "District Courts is required to make specific factual findings regarding factor for imposition of fine because those finds are essential to effective appellate review of fines imposed and failure to make any findings is grounds for vacation of fines." (See also U.S. v Thompson, 113 F.3d 13 (2nd Cir. 1997)

V. "If Defendant successfully demonstrates that he is unable to pay any fine, then fine may be inappropriate." (U.S. v Eureka Laboratories, Inc., 103 F.3d 908 (9th Cir. 1996).

Petitioner presents that he is serving a 55-yrs. to life sentence formost. Currently Petitioner is proceeding "in forma pauperis" and is indigent. Petitioner alleges it was the Courts erroneous assumption that Defendant could pay the fine via the earnings of prison assignment where the rates of pay for work is outlined in the

California Department of Corrections Operations manual, section 51120.7.

Those Rates from $12.00 Per Month to $56.00 Per month Roughly are subject to Penal Code 2811 and Penal Code 2085.5 meaning 55% of said "Possible" Pay Rates would go towards Restitution.

However, Almost 3% of the Pleasant Valley State Prison workforce has Pay numbers designation. Thus it would be nearly impossible to Pay any excessive Fine even with a 55-yrs to life sentence. Out of the "A" Facility Population of 1148 total inmates only 120 have Pay numbers most at a 5-8 ¢ an hour rate of Pay.

(See also U.S. v Davis, 117 F.3d 459 (11th Cir. 1997), "District Court must evaluate Defendants Financial Condition and ability to Pay before determining Restitution amount."); U.S. v Fair, 979 F.2d 1037 (5th Cir. 1992)

Conclusion

Petitioner's grounds are means to grant relief where Respondent can not show that He had/has ability to Pay said excessive fine or Restitution and that sentencing court considered said

PENALTY AFTER REVIEW OF FACTS PERTAINING PRIOR TO IMPOSING THE IN APPROPRIATE FINE.

EXECUTED UNDER PENALTY OF PERJURY AT PLEASANT VALLEY STATE PRISON ON JULY , 2008.

RESPECTFULLY SUBMITTED,

[signature]

WILLIE STEWART JR.
PETITIONER (IN PRO PER)